

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

CUBICLE SOLUTIONS, INC.,
MICHAEL J. BERGERON, and
JOHN J. CINCOTTA,

Plaintiffs,

v.

FEDERAL INSURANCE COMPANY,

Defendant.

Civil Action No.: 1:21-cv-392

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Federal Insurance Company (“Federal”), by its attorneys Nixon Peabody LLP, hereby removes the state court action, captioned *Cubicle Solutions, Inc., Michael J. Bergeron, and John J. Cincotta v. Federal Insurance Company*, currently pending in the Superior Court of the State of New Hampshire, Rockingham County, Case No. 218-2021-CV-00349 (“State Court Action”), to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. The grounds for removal are as follows:

1. This action is removable, pursuant to 28 U.S.C. §§ 1332 and 1441(a) and (b), on the grounds that this Court has original diversity jurisdiction and the amount in controversy exceeds \$75,000.
2. On or about March 30, 2021, Plaintiffs filed their Complaint for Declaratory Judgment, Assessment of Damages, and Attorneys’ Fees in the State Court Action (“Complaint”) in the Rockingham County Superior Court, seeking declaratory relief, assessment of damages, and

an award of attorneys' fees and costs, allegedly resulting from a denial of insurance coverage. The Complaint names Federal as the sole defendant.

3. Plaintiffs served the Complaint on the Commissioner for the State of New Hampshire Insurance Department on or about April 15, 2021.

4. The New Hampshire Insurance Commissioner notified Federal of service of the State Court Action by way of Certified Mail dated April 15, 2021. The Insurance Commissioner's letter and the Summons and Complaint were received by Chubb on or about April 21, 2021.

5. Pursuant to 28 U.S.C. § 1446(a), undersigned counsel attaches hereto, as **Exhibit A**, the New Hampshire Insurance Commissioner's notification of service dated April 15, 2021; the Summons, Notice of Service, and State Court Complaint to Defendant; and the Affidavit of Service dated April 15, 2021 by the Merrimack County Sheriff's Office. These documents constitute all "processes, pleadings and orders" served upon Federal in the State Court Action to date.

6. Upon information and belief, at the time of commencement of the State Court Action, Plaintiff Cubicle Solutions, Inc. ("Cubicle Solutions") was a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with a principal place of business located at 11 Garabedian Drive in Salem, New Hampshire 03079.

7. Upon information and belief, at the time of commencement of the State Court Action, Plaintiff Michael J. Bergeron was the President of Cubicle Solutions, and resided at 247 Lynn Fells Parkway, Saugus, Massachusetts 01906.

8. Upon information and belief, at the time of the commencement of the State Court Action, Plaintiff John J. Cincotta was the Treasurer of Cubicle Solutions, and resided at 2 Jack Rabbit Run, Hampstead, New Hampshire 03841.

9. Defendant Federal is an Indiana corporation with a principal place of business in New Jersey.

10. On information and belief, there is complete diversity of citizenship between the parties.

11. The Complaint alleges, *inter alia*, breach of contract and breach of duty of good faith and fair dealing. Plaintiffs seek a declaratory judgment, an order to defend and indemnify Plaintiffs in connection with underlying claims, and an award of damages for all costs and legal fees incurred in the underlying actions brought in the State of New Hampshire and the Commonwealth of Massachusetts against Federal. Plaintiffs allege they have been damaged in an amount exceeding the policy's \$50,000 per claim retention. Because the amount in controversy exceeds \$75,000 and there is complete diversity of citizenship, this Court may exercise diversity jurisdiction pursuant to 28 U.S.C. § 1332.

12. Rockingham County Superior Court is located within the district of the United States District Court for the District of New Hampshire. Therefore, venue is proper because the State Court Action lies within the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

13. This Notice of Removal is being filed within 30 days after receipt by Federal of notice of the State Court Action, and is therefore timely filed pursuant to 28 U.S.C. § 1446(b).

14. Pursuant to 28 U.S. C. § 1446(d), written notice of the filing of this Notice of Removal will be served promptly upon Plaintiffs and, together with a copy of the Notice of Removal, will be filed with the Clerk of the Rockingham County Superior Court.

15. In accordance with Local Rule 81(a), Federal will ensure that a certified copy of the State Court Action record is filed with this Court within fourteen (14) days after filing this Notice of Removal.

16. Federal has not yet filed a responsive pleading in the State Court Action. Federal hereby notifies the Court and Plaintiffs that it demands a jury trial on all claims so triable.

WHEREFORE, Defendant Federal Insurance Company prays this action proceed in this Court as an action properly removed thereto.

Respectfully submitted,

FEDERAL INSURANCE COMPANY,

By its attorneys,

Dated: May 14, 2021

/s/ Nathan P. Warecki

Nathan P. Warecki, Esq. (N.H. Bar No. 20503)

Kurt M. Mullen, Esq. (*Pro Hac Vice Forthcoming*)

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2021, I served a copy of the within Notice of Removal via United States first-class mail, postage prepaid, to the following counsel of record:

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/s/ Nathan P. Warecki

Nathan P. Warecki, Esq.